

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

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CLERK US DISTRICT COURT  
NORFOLK, VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 2:06-cv-624

SEA BAY DEVELOPMENT CORP.;  
BEECHTREE PARK, INC.; GREEN SEA  
FARMS, LLC; ELWOOD H. PERRY;  
FRANK T. WILLIAMS' FARMS, INC.; and  
FERRELL'S BACKHOE SERVICE, INC.,

Defendants.

**CONSENT DECREE**

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed the Complaint herein against Defendants Sea Bay Development Corp.; Beechtree Park, Inc.; Green Sea Farms LLC; Elwood H. Perry; Frank T. Williams' Farms, Inc.; and Ferrell's Backhoe Service, Inc., alleging that Defendants violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging dredged and/or fill material and/or controlling and directing the discharge of dredged and/or fill material into waters of the United States at an approximately 1,560-acre property known as the Sea Bay Site or Green Sea Farm, located west of Johnstown Road, east of Shillelagh Road, and south of the Whispering Pines subdivision, in Chesapeake, Virginia, (the "Site") and more fully described in the Complaint, without authorization by the United States Department of the Army ("the Corps");

WHEREAS, the Complaint seeks: (1) to permanently enjoin Defendants from discharging or causing the discharge of dredged material, fill material, sediment, and any other pollutants into any waters of the United States except in compliance with the CWA; (2) to require Defendants, at their own expense and at the direction of the EPA and/or the Corps, to effect complete restoration of waters of the United States, including wetlands, on the Site and/or to conduct off-site mitigation for irreversible environmental damage; and (3) to require Defendants to pay civil penalties for each day of each violation of the CWA, as provided in 33 U.S.C. § 1319(d);

WHEREAS, Sea Bay Development Corp., Beechtree Park, Inc. and Green Sea Farms LLC (collectively the "Sea Bay Defendants") are farming certain portions of the Site and have advised the United States that they intend to continue farming and may develop certain portions of the Site;

WHEREAS, the Sea Bay Defendants assert that no violations of the CWA have occurred due to several defenses, including, but not limited to, that the areas into which discharges of dredged or fill material were made do not constitute waters of the United States, that any such discharges qualified as non-prohibited discharges under Section 404(f) of the CWA, 33 U.S.C. § 1344(f)(1), and that the Corps authorized such discharges;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the civil claims under the CWA which were or could have been brought by the United States against the Sea Bay Defendants regarding the Site, up to the date of entry of this Decree;

WHEREAS, the United States and the Sea Bay Defendants agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA against the Sea Bay Defendants in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against the Sea Bay Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law,

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Eastern District of Virginia pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Sea Bay Defendants conduct business in this District, the subject property is located in this District, and the causes of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

#### II. APPLICABILITY

4. The rights and obligations of this Consent Decree shall apply to and be binding upon the Sea Bay Defendants, their officers, directors, agents, employees, representatives and servants, and their successors and assigns and any person, firm, association, partnership or corporation who is, or will be, acting in concert or participation with any of the Sea Bay Defendants, and upon the United States, including all of its departments, agencies, and

instrumentalities, its officers, employees, representatives and agents, whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against a Sea Bay Defendant, the Sea Bay Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, representatives, servants, and their successors and assigns or any person, firm, association, partnership or corporation acting in concert or participation with the Sea Bay Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the Site shall not alter or relieve the Sea Bay Defendants of their obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in the Site, the party making such transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify EPA and the United States Department of Justice at the addresses specified in Section X below that such notice has been given. As a condition to any such transfer, the Sea Bay Defendant(s) making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

### III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties that were or could have been alleged against the Sea Bay Defendants under the CWA concerning the Site, up to the date of entry of this Decree. The United States covenants not to sue the Sea Bay Defendants and releases them from liability for such claims.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or

resulting from the activities required by this Consent Decree shall have the objective of causing the Sea Bay Defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. The Sea Bay Defendants' obligations under this Consent Decree are joint and several.

9. This Consent Decree authorizes any dredged or fill material that was placed on the Site by Defendants as of April 1999 to remain in place, subject to the conditions of this Consent Decree. This Consent Decree further authorizes the discharge of dredged or fill material in the area identified as the Remedy Area in Figure 1 insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree, as specifically set out in the Wetlands Project in Section IV. Any such discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of this Consent Decree.

10. Except as specifically authorized in this Consent Decree, this Consent Decree in no way affects or relieves the Sea Bay Defendants' responsibility to comply with any applicable federal, state, or local law, regulation or permit.

11. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

12. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law.

13. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law. However, if the United States elects to seek both stipulated penalties and civil or administrative penalties from the Sea Bay

Defendants for the same violation, any recovery of stipulated penalties would be offset by the amount awarded to the United States in civil or administrative penalties, or vice versa.

14. Nothing in this Consent Decree shall constitute an admission of fact or law by any party. Further, the Sea Bay Defendants do not admit any liability arising out of the transactions or occurrences alleged in the Complaint.

#### IV. REMEDY

15. Designation of the Potential Development Area and Remedy Area Within the Site.

The United States and the Sea Bay Defendants agree that the Site shall be divided into two separate areas, the Potential Development Area ("PDA") and the Remedy Area ("RA"), as specifically delineated on Figure 1, which is hereby incorporated by reference as an enforceable part of this Consent Decree. The PDA consists of Fields 1 - 4 and Areas A - M as delineated on Figure 1. The lateral boundaries of the PDA with respect to road corridors, Areas A - M, and Fields 1 - 4 are depicted on Figures 2 and 3 respectively, which are hereby incorporated by reference as enforceable parts of this Consent Decree. The RA consists of all other areas within the boundaries of the Site which lie outside of the lateral limits of the PDA as defined above and in Figures 1 - 3.

16. Survey. No later than sixty (60) days after entry of the Consent Decree, the Sea Bay Defendants will have a survey initiated to precisely define the limits of the RA and the PDA. Assuming normal weather conditions, all survey work shall be completed within ninety (90) days thereafter. The Sea Bay Defendants will tender the survey to EPA, and unless EPA objects within thirty (30) business days, the survey will become effective and be incorporated by reference into this Decree and will supersede the boundaries of the RA and PDA currently set out in Figure 1.

17. Remedy Area. The parties agree that the RA is a “water of the United States” under the CWA. Any discharges of dredged or fill material encompassed within the Wetlands Project as set forth in this Section and Section III, paragraph 9, are authorized by this Consent Decree and will not require a permit under Section 404 of the CWA, 33 U.S.C. § 1344. The RA shall be protected by a Preservation Project, consisting either of the establishment of a conservation easement or deed restrictions, as provided in paragraphs 26 - 30 of this Section.

18. Potential Development Area. The parties further agree that this Consent Decree authorizes future discharges of dredged and fill material within the PDA and that permits under Section 404 of the CWA, 33 U.S.C. § 1344, are not required for any discharges of dredged or fill material within the PDA.

19. Deed Restrictions.

a. To ensure that the entirety of the RA is protected, the Sea Bay Defendants shall, within sixty (60) days of entry of this Consent Decree or within sixty (60) days of the effective date of the survey, whichever is later, adopt deed restrictions on the PDA that will run with the land in perpetuity and provide as follows:

i. No storm water ponds may be located within 50 feet of the RA. In the event that storm water ponds are located between 51 and 200 feet of the RA, such storm water ponds shall be constructed using measures, such as clay lining, to protect against dewatering the RA.

ii. No borrow pits may be located within 500 feet of the RA.

iii. No drainage ditch constructed after entry of the Consent Decree shall be located within 200 feet of the RA, unless: (a) the ditch is perpendicular to the RA line, in which case it may be located no closer than 50 feet from that line; or (b) the ditch is a roadside

ditch located in Areas C, H, I, or J as identified in Figure 1, in which case appropriate measures (such as clay lining) must be adopted to minimize the dewatering of the RA; provided, however, that this restriction does not prohibit the use of swales within 200 feet of the RA to control, collect, and convey local surface storm water runoff generated within the PDA. Such swales would require that a berm be created within the PDA between the swale and the RA as depicted in Figure 5, which is hereby incorporated by reference as an enforceable part of this Consent Decree. Such swales will be restricted in depth to be no deeper than any existing ditch at that location, or no deeper than 2.5 feet when an existing ditch is not present. Side slope angles will be dictated by any applicable City of Chesapeake requirements.

iv. Any development project in the PDA must allow for the normal passage of water flow and wildlife through Areas C, H, I, and J as identified in Figure 1.

b. In order to prevent flooding of existing or future agricultural activities and development within the PDA and, at the same time, protect the RA, when the Sea Bay Defendants or their successors or assigns adopt a conservation easement or deed restrictions, pursuant to Paragraphs 26-30, the following rights and restrictions shall be retained:

i. the right of entry and of access to the RA for the maintenance of adequate drainage of the central collector ditch from Area J to the western property line in Area M, the ditch connecting Field 3 to the central collector ditch, and the two ditches outside the southwest corner of Field 3, which together drain to Area F, as identified in Figure 1. The Sea Bay Defendants agree to provide EPA and, if a conservation easement is granted, the grantee, with a proposed maintenance plan forty-five (45) days prior to conducting such maintenance work. If EPA approves the maintenance plan, or does not respond within the forty-five (45) day period, then the Sea Bay Defendants may proceed with the maintenance work. If EPA suggests



modifications to the maintenance plan, the Sea Bay Defendants shall either adopt those modifications and proceed with implementation, or initiate dispute resolution pursuant to Section VII. Notwithstanding any of the foregoing, in exigent circumstances, the parties agree to expedite this review to expedite needed maintenance. Nothing in this paragraph waives any requirement to obtain local, state, or federal permits, if required. However, this Consent Decree authorizes future discharges of dredged and fill material necessary for such maintenance work and for access to perform that work, if EPA has approved the plan for maintenance and access submitted to it by the Sea Bay Defendants, or does not respond within forty-five (45) days of the Sea Bay Defendants' submittal to EPA. Notwithstanding the above, the Sea Bay Defendants may proceed to the extent that the maintenance work and access to perform that work are authorized or exempt under the CWA.

ii. Utility lines may not be located in the RA unless the Sea Bay Defendants or their successors or assigns establish that, for technical and engineering reasons, utility lines must be located within the RA and that without such utilities in such location the design of the development of the PDA would not be possible. Cost shall not be a factor in consideration of the preceding sentence.

c. The deed restrictions shall be recorded, along with a certified copy of this Consent Decree and all attachments thereto, with the Recorder of Deeds Office, in the City of Chesapeake, Virginia. Thereafter, each deed, title, or other instrument conveying an interest in any portion of the RA or the PDA shall contain the deed restrictions and a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

20. Activities Within the RA. The parties agree that the RA will undergo improvements to its hydrology through the Wetlands Project as set forth in paragraphs 21-25 and will be preserved in perpetuity under a conservation easement or deed restrictions through the Preservation Project as set forth in paragraphs 26-30, subject to paragraph 19. Until such time as the conservation easement or deed restrictions are recorded, no other activities except those set forth in paragraph 19(b) shall occur in the RA. Thereafter, the provisions of the Preservation Project as set forth in paragraphs 26-30, subject to paragraph 19, will apply.

21. Wetlands Project. The Sea Bay Defendants shall perform the Wetlands Project as described below in paragraphs 21-25. The Wetlands Project will plug specified ditches to improve hydrology while simultaneously ensuring that the Wetlands Project does not cause flooding on the existing or future uses of the PDA or properties neighboring the Site during normal rainfall years.

22. Ditch Plugs. The Wetlands Project will consist of the placement of ditch plugs in the approximate locations identified in Figure 1. Ditch plugs located adjacent to a road will be placed on the upstream side of the road to prevent the undermining of the structural integrity of the road. As identified in Figure 1, the ditch plugs will either be placed to the top of the ditch and have side slopes in the approximate configuration depicted in Figure 4, which is hereby incorporated by reference as an enforceable part of this Consent Decree, or be blocked 12 inches above the bottom of the ditch, and otherwise follow the approximate configuration depicted in Figure 4. The ditch plugs shall be mechanically compacted, shall consist of suitable earthen material that will minimize erosion or other damage to their structural integrity, and shall be naturally stabilized with vegetation or sediment, as appropriate.

23. Ditch Plug Integrity. All ditch plugs will be monitored for physical integrity, through photographs and inspection, upon completion of installation of all ditch plugs and every six (6) months thereafter for a period of two (2) years, in order to determine the existence of seeps, leaks, weeps, erosion or any other physical indication that surface or groundwater is moving away from the plugged area. If any inspection reveals water loss that threatens the structural integrity of one or more of the ditch plugs, the Sea Bay Defendants will propose to EPA remedial measures within thirty (30) days. In the event that Sea Bay Defendants discover, through other means, that water from the plugged ditches is finding another natural or created outlet or that a new or unexpected drainage pattern has emerged, the Sea Bay Defendants will report their finding and propose remedial measures to EPA within a reasonable period of time, not to exceed ninety (90) days. The Sea Bay Defendants will implement and complete approved remedial measures within thirty (30) days of receipt of EPA approval, assuming normal weather conditions, or within a longer period as agreed to in writing by EPA and the Sea Bay Defendants.

24. Monitoring. The Sea Bay Defendants shall install bore holes at the approximate locations identified as numbers 1 - 3 on Figure 1. The Sea Bay Defendants shall monitor the bore holes one time per week from the on-set of the growing season (typically March 15) until the groundwater table drops below 18 inches and does not move significantly toward the surface after rain events (typically mid to late May), but in no case longer than twelve (12) weeks per year. Monitoring will occur for a period of two (2) years, beginning in the first growing season subsequent to final installation of the ditch plugs.

a. The Sea Bay Defendants shall provide to the United States an annual report of the monitoring results not later than sixty (60) days after the end of each year's monitoring period.

b. A bore hole shall be determined to have attained wetlands hydrology when, during a normal or below-normal rainfall year, the bore hole shows saturation within 12 inches of the surface for fifteen (15) days or more during the growing season.

c. At the end of the first year of monitoring, if the report shows that any bore hole has attained wetlands hydrology during a normal or below-normal rainfall year, the Wetlands Project will be complete as to that modified ditch plug, and no further monitoring will be required in that location.

d. At the end of the first year of monitoring, if the report shows that any bore hole has not attained wetlands hydrology in a normal rainfall year, the parties shall agree upon physical modifications to the ditch plugs, provided, however, that any such modification does not cause flooding on the existing or future uses of the PDA or properties neighboring the Site during normal rainfall years, which the Sea Bay Defendants will implement.

e. At the end of the first year of monitoring, if the report shows that wetlands hydrology has not been met in a below-normal rainfall year, the parties shall wait to take remedial measures, if warranted, until the report for the second year of monitoring has been submitted.

f. At the end of the second year of monitoring, if the report shows that wetlands hydrology has not been met in a normal or below-normal rainfall year, the parties shall agree upon physical modifications to the ditch plugs, provided, however, that any such modification does not cause flooding on the existing or future uses of the PDA or properties neighboring the Site during normal rainfall years, which the Sea Bay Defendants will implement.

g. Completion. Monitoring will be complete if all of the bore holes meet the standard in paragraph 24(b) or, at the conclusion of the second year of monitoring, after implementation of any physical modifications to the ditch plugs agreed to under paragraph 24(f),

and following submission of the required reports. The Sea Bay Defendants will provide the United States with notice of completion, and the United States will confirm completion within forty (40) days thereafter unless the parties agree in writing to a longer time. If the United States does not respond within forty (40) days, or a longer time if agreed to by the parties in writing, the completion will be deemed confirmed. Irrespective of the monitoring results, the Sea Bay Defendants' obligation to monitor will last no more than two growing seasons.

25. Schedule. Assuming seasonal or weather conditions permit and that there are no significant mechanical problems with construction equipment, the Sea Bay Defendants shall commence the Wetlands Project, as described in paragraph 22, on or about May 15, 2008. Assuming seasonal or weather conditions permit and that there are no significant mechanical problems with construction equipment, all work shall be completed by October 15, 2008. This schedule is irrespective of when or whether the PDA is developed.

26. Preservation Project. The Sea Bay Defendants shall also perform a Preservation Project for the RA. The Preservation Project shall consist of either the establishment of a conservation easement substantially similar to the model conservation easement attached as Exhibit 1 to this Consent Decree or the imposition of deed restrictions embodying substantially the same restrictions on use as set forth in Exhibit 2.

27. Preservation in Perpetuity and Restrictions on Use. The conservation easement or deed restrictions will preserve the RA in perpetuity and will prohibit mowing, cutting, clearing, cultivating, dredging, excavation, farming, filling, dewatering, draining, or any other significant disturbance or alteration of the RA, provided, however, that the conservation easement and deed restrictions will be subject and subordinate to the rights retained by, and the restrictions on, the

Sea Bay Defendants, their successors or assigns, regarding maintenance of adequate drainage and utility lines in paragraph 19(b).

28. Good Faith Efforts to Identify Grantees for Conservation Easement.

a. Following EPA's confirmation that monitoring is complete as to all bore holes pursuant to paragraph 24(g), the Sea Bay Defendants shall make a good faith effort for up to 180 days to identify one acceptable conservation easement grantee from among the following four potential grantees, all of which have been approved by EPA: The Nature Conservancy, Virginia Outdoors Foundation, the City of Chesapeake, and the Land Trust of Virginia. To be an acceptable grantee, the grantee must be willing to:

i. Accept the RA subject to the terms and conditions of this Consent Decree and the easements and restrictions established pursuant to this Consent Decree (including paragraph 19(b) concerning the right of access to the RA for certain limited purposes); and

ii. Enter into a conservation easement substantially similar to the model conservation easement attached as Exhibit 1 to this Consent Decree. If the grantee requires payment of an endowment to support maintenance of the conservation easement, the Sea Bay Defendants agree to pay an endowment that is reasonable in light of local standards.

b. If an acceptable grantee is identified, the Sea Bay Defendants will provide EPA with a draft of a proposed conservation easement that is substantially similar to the model conservation easement attached as Exhibit 1. EPA may suggest revisions to the conservation easement that are in keeping with the model conservation easement attached as Exhibit 1 within forty-five (45) days. If EPA does not suggest revisions within forty-five (45) days, the Sea Bay Defendants may record the easement. If EPA suggests revisions, the Sea Bay Defendants and the

grantee may accept those revisions and record the easement not later than sixty (60) days thereafter, or the Sea Bay Defendants may initiate dispute resolution pursuant to Section VII.

29. If the Sea Bay Defendants, despite their good faith efforts pursuant to paragraph 28, are unable to identify an acceptable conservation easement grantee, then they shall submit to EPA deed restrictions substantially similar to the deed restrictions attached as Exhibit 2. EPA may suggest revisions to the deed restrictions that are in keeping with the model deed restrictions attached as Exhibit 2 within thirty (30) days. If EPA does not suggest revisions within thirty (30) days, the Sea Bay Defendants shall record the deed restrictions. If EPA suggests revisions, the Sea Bay Defendants may accept those revisions and record the deed restrictions, or initiate dispute resolution pursuant to Section VII.

30. The conservation easement or deed restrictions will be incorporated into and become a requirement of the Consent Decree. The Sea Bay Defendants shall grant the conservation easement or impose the deed restrictions and record the conservation easement or deed restrictions in the Recorder of Deeds Office, in the City of Chesapeake, Virginia, at any time after entry of the Decree or as described in paragraphs 28 and 29. In the event that deed restrictions are recorded, each subsequent deed, title, or other instrument conveying an interest in the RA shall contain the deed restrictions and a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree. Any disputes over the conservation easement or deed restrictions shall be subject to the Dispute Resolution provisions set forth in Section VII of the Consent Decree.

31. If the conservation easement or deed restrictions are found to be defective or illegal at any time, the United States may enforce this Consent Decree against the Sea Bay Defendants,

or their successors or assigns, to obtain the granting of either a conservation easement or deed restrictions for the RA that complies with applicable law.

32. When the Sea Bay Defendants have installed and monitored the ditch plugs in accordance with the provisions of paragraphs 22 - 24 , the obligation of the Sea Bay Defendants to perform the Wetlands Project will be satisfied and the Wetlands Project will be deemed complete for the purposes of Section XV, Termination. The obligation of the Sea Bay Defendants to perform the Preservation Project will be satisfied, and the Preservation Project will be deemed complete for purposes of Section XV, Termination, when the Sea Bay Defendants record a conservation easement or deed restrictions in accordance with the provisions of paragraph 30.

#### V. NOTICES AND OTHER SUBMISSIONS

33. Within 40 days after the deadline for completing any task set forth in Section IV of this Consent Decree, the Sea Bay Defendants shall provide the United States with written notice, at the addresses specified in Section X of this Consent Decree, of whether or not that task has been completed.

34. If the required task has been completed, the notice shall specify the date when it was completed. If the required task has not been completed, or was completed after the deadline, then the notice shall explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree.

35. In all documents submitted to the United States pursuant to this Consent Decree, the Sea Bay Defendants shall, by signature of a senior management official or of an agent designated to act on behalf of all the Sea Bay Defendants, certify such notices as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.



Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

#### VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

36. The Sea Bay Defendants shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in Section IV of this Consent Decree, regardless of any corporate retention policy to the contrary, for a period of ninety (90) days after the date of the termination of this Consent Decree. The Sea Bay Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Section IV of this Consent Decree.

37. At the conclusion of the document retention period specified in paragraph 36, the Sea Bay Defendants shall notify the United States at least sixty (60) days prior to the destruction of any such records or documents, and, upon request by the United States, the Sea Bay Defendants shall deliver any such records or documents to EPA. If the United States does not request delivery of such records or documents within the 60-day period, then the records or documents may be destroyed. The Sea Bay Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Sea Bay Defendants assert such a privilege, they shall provide the United States with the following:

- a. The title of the document, record, or information;
- b. The date of the document, record, or information;
- c. The name and title of the author of the document, record, or information;

- d. The name and title of each addressee and recipient;
- e. A description of the subject of the document, record, or information; and
- f. The privilege asserted by the Sea Bay Defendants.

38. Inspections.

a. Until termination of this Consent Decree, the United States and its authorized representatives and contractors may, upon reasonable notice, at all reasonable times, enter the Site to:

- i. Monitor the activities required by this Consent Decree;
- ii. Verify any data or information submitted to the United States;
- iii. Obtain samples; and
- iv. Inspect and evaluate the Wetlands Project.

Nothing in this Decree waives or diminishes in any way EPA's authorities under CWA Section 308.

b. During the document retention period specified in paragraph 36, the United States may inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA, and the Sea Bay Defendants shall produce such records for inspection by the United States at a reasonable time and location.

c. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring and to obtain information from the Sea Bay Defendants as authorized by law.

VII. DISPUTE RESOLUTION

39. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United

States and any Sea Bay Defendants affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and the Sea Bay Defendants cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) days after the end of the informal negotiations period, the Sea Bay Defendants file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Sea Bay Defendants shall bear the burden of proving by a preponderance of the evidence that the Sea Bay Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

40. If the United States or the Sea Bay Defendants believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, either party may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The non-moving party shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Sea Bay Defendants shall bear the burden of proving by a preponderance of the evidence that the Sea Bay Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

41. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Sea Bay Defendants under this Consent Decree, except as provided in Paragraph 49 below regarding payment of stipulated penalties.

## VIII. FORCE MAJEURE

42. The Sea Bay Defendants shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event, or otherwise agreed to in writing by the United States and the Sea Bay Defendants. A Force Majeure event is defined as any event arising from causes beyond the control of the Sea Bay Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site. The Sea Bay Defendants reserve the right to assert, and the United States reserves the right to dispute, that the failure of the Sea Bay Defendants to obtain federal, state or local permits constitutes a Force Majeure event. The failure of the Sea Bay Defendants to obtain such permits due to their failure to make timely and complete permit application(s) shall not constitute a Force Majeure event.

43. If the Sea Bay Defendants believe that a Force Majeure event has affected their ability to perform any action required under this Consent Decree, they shall notify the United States within seven (7) business days after the event at the addresses listed in Section X. Such notice may be by electronic or facsimile transmission, as long as the Sea Bay Defendants subsequently provide that notice by hard copy letter. Such notice shall include a discussion of:

- a. What action has been affected; and
- b. The specific cause(s) of the delay.

Within twenty (20) days of such notice, the Sea Bay Defendants shall provide the United States with further information, including a discussion of:

- c. The length or estimated duration of the delay; and
- d. Any measures taken or planned by the Sea Bay Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

The Sea Bay Defendants may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

44. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event and/or any such other date as agreed upon in writing by the parties. The Sea Bay Defendants shall coordinate with EPA to determine when to begin or resume the operations affected by any Force Majeure event.

45. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VII of this Consent Decree.

46. The Sea Bay Defendants shall bear the burden of proving by a preponderance of the evidence:

- a. That the noncompliance at issue was caused by an event arising from causes beyond the control of the Sea Bay Defendants, including their employees, agents,

consultants and contractors, which could not be overcome by due diligence and which delayed or prevented the performance of the affected action;

b. That the Sea Bay Defendants or any entity controlled by the Sea Bay Defendants could not reasonably have foreseen and prevented such noncompliance; and

c. The number of days of noncompliance that were caused by such circumstances.

#### IX. STIPULATED PENALTIES

47. After entry of this Consent Decree, if the Sea Bay Defendants fail to timely fulfill any requirement of the Consent Decree (including those specifically identified in the attachments to this Decree), the Sea Bay Defendants, collectively, shall, upon demand made by the United States, pay a stipulated penalty to the United States for each failure to timely fulfill each requirement of this Consent Decree as follows:

a. For Day 1 up to and including Day 30 of non-compliance--\$400.00 per day

b. For Day 31 up to and including Day 60 of non-compliance--\$1,200.00 per day

c. For Day 61 and beyond of non-compliance--\$2,200.00 per day

Such payments shall be made on or before the last day of the month following the month in which the United States demands payment.

48. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VII and/or the Force Majeure provisions in Section VIII shall be resolved upon motion to this Court as provided in paragraphs 39 and 40.

49. Notice of a Dispute pursuant to paragraph 39 shall stay the Sea Bay Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that the Sea Bay Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by the Sea Bay Defendants as provided in this Section IX.

50. To the extent that the Court determines that a delay or other non-compliance was due to a Force Majeure event (as defined in paragraph 42 above) and that the Sea Bay Defendants could not reasonably have foreseen and prevented such delay or non-compliance, or the Sea Bay Defendants otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

51. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

52. The Sea Bay Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2006V01299, EPA Region III and the DOJ case number (DJ#90-5-1-1-05061). Payment shall be made in accordance with instructions provided to the Sea Bay Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Virginia. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, the Sea

Bay Defendants shall provide written notice, at the addresses specified in Section X of this Consent Decree.

#### X. ADDRESSES

53. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

a. To EPA:

- (i) Pamela Lazos, Mail Code 3RC20  
Senior Assistant Regional Counsel  
United States Environmental Protection Agency Region III  
1650 Arch St.  
Philadelphia, PA 19103-2029
- (ii) Jeffrey Lapp, Mail Code 3EA30  
United States Environmental Protection Agency Region III  
1650 Arch St.  
Philadelphia, PA 19103-2029
- (iii) April Bowie, Docket Clerk, Mail Code 3RC00  
United States Environmental Protection Agency Region III  
1650 Arch St.  
Philadelphia, PA 19103-2029

b. To the United States Department of Justice:

Cynthia J. Morris, Trial Attorney  
Kenneth C. Amaditz, Trial Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

c. To the Sea Bay Defendants:

- (i) Ms. Christina Bosher  
Sea Bay Development Corp.  
P.O. Box 655  
Virginia Beach, Virginia, 23451



- (ii) Ms. Christina Bosher  
Beechtree Park, Inc.  
P.O. Box 655  
Virginia Beach, Virginia, 23451
- (iii) Ms. Christina Bosher  
Green Sea Farms, LLC  
P.O. Box 655  
Virginia Beach, Virginia, 23451
- (iv) Virginia S. Albrecht  
Karma B. Brown  
Hunton & Williams LLP  
1900 K St., NW  
Washington, D.C. 20006-1109  
*Counsel for Defendants Sea Bay Development Corp., Beechtree Park, Inc., and Green Sea Farms LLC*

#### XI. COSTS OF SUIT

54. Each party to this Consent Decree shall bear its own costs and attorneys' fees through the entry of the Consent Decree.

#### XII. PUBLIC COMMENT

55. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Sea Bay Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Sea Bay Defendants in writing that it no longer supports entry of the Consent Decree.

### XIII. CONTINUING JURISDICTION OF THE COURT

56. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

### XIV. ENTRY AND MODIFICATION

57. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. If agreed to in writing and signed by both the United States and the Sea Bay Defendants, those parties may agree to modify deadlines in this Decree by thirty (30) days without leave of Court. Any other modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Sea Bay Defendants and approved by the Court.

### XV. TERMINATION

58. Except for Paragraphs 18, 19, 36, and 37, which provisions survive any termination of this Consent Decree, the Court may terminate this Consent Decree if:

- a. The Sea Bay Defendants and the United States make a joint motion to the Court for termination of this Decree or any portion of it; or
- b. The Sea Bay Defendants make a unilateral motion to the Court to terminate this Decree after (i) through (iv) have occurred:
  - i. The Sea Bay Defendants have complied with all provisions of this Consent Decree (except for provisions of paragraphs 36 and 37, which concern post-termination document retention obligations);

ii. The Sea Bay Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

iii. The Sea Bay Defendants have certified compliance pursuant to subparagraphs (i) and (ii) above to the Court and the United States; and

iv. Within forty (40) days of receiving such certification from the Sea Bay Defendants, the United States has not contested in writing that such compliance has been achieved;

v. In the event that the United States has not contested in writing pursuant to (iv) that such compliance has been achieved, and the United States does not oppose the Sea Bay Defendants' motion, then the Court may grant the Sea Bay Defendants' motion to terminate; or

c. If the Sea Bay Defendants make a unilateral motion to the Court to terminate this Decree, but the United States disputes the Sea Bay Defendants' compliance with subparagraphs (b) (i) and (ii) above, then the Court shall rule on the Sea Bay Defendants' motion, and, if the Court determines that the Sea Bay Defendants have complied with subparagraphs (b) (i) and (ii), it shall order the termination of the Decree.

d. After the Court orders Termination, the Court will retain jurisdiction to enforce the provisions in paragraphs 36, 37 (concerning post-termination document retention obligations), 18, and 19.

IT IS SO ORDERED.

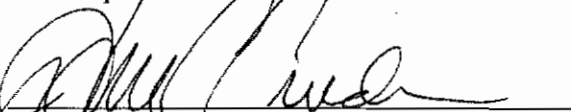
Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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United States District Judge

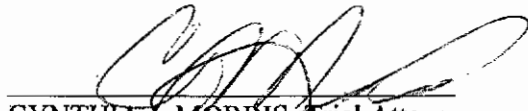
ON BEHALF OF THE UNITED STATES:

RONALD J. TENPAS  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice



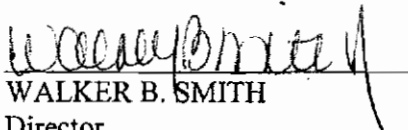
JOHN C. CRUDEN  
Deputy Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Dated: 10-25-07



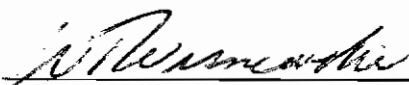
CYNTHIA A. MORRIS, Trial Attorney  
KENNETH C. AMADITZ, Trial Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(202) 616-7554 (Morris)  
(202) 514-3698 (Amaditz)

Dated: 10/25/07



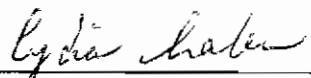
WALKER B. SMITH  
Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Dated: 10/24/07



Dated: 10-25-07

*for* DONALD S. WELSH  
Regional Administrator  
U.S. Environmental Protection Agency, Region III



Dated: 10/24/07

*for* WILLIAM C. EARLY  
Regional Counsel  
U.S. Environmental Protection Agency, Region III

FOR DEFENDANTS SEA BAY DEVELOPMENT CORP., BEECHTREE PARK, INC. AND  
GREEN SEA FARMS LLC:

Christina E. Boshier

Ms. Christina Boshier  
Vice President  
Beechtree Park, Inc.

Dated: Oct. 22, 2007

President/Secretary  
Sea Bay Development Corp.  
Green Sea Farms, LLC  
P.O. Box 655  
Virginia Beach, VA 23451

**United States District Court for the Eastern District of Virginia Norfolk Division**  
***United States v. Sea Bay Development et al.*, Civil Action No. 2:06-cv-624**

**Consent Decree**  
**Appendix**

Figures

Figure 1: Wetlands Project Map

Figure 2: Typical Placement of Boundaries Along Road Corridors and for Road Corridors Adjoining Potential Development Areas and/or Prior Converted Cropland

Figure 3: Typical Placement of Boundaries Along Converted Cropland and/or Potential Development Area

Figure 4: Typical Ditch Plug

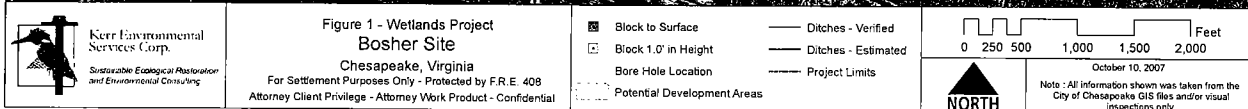
Figure 5: Typical Placement of Swales for Stormwater Runoff Within the “Potential Development Area”

Exhibits

Exhibit 1: Sample Conservation Easement

Exhibit 2: Sample Deed Restriction

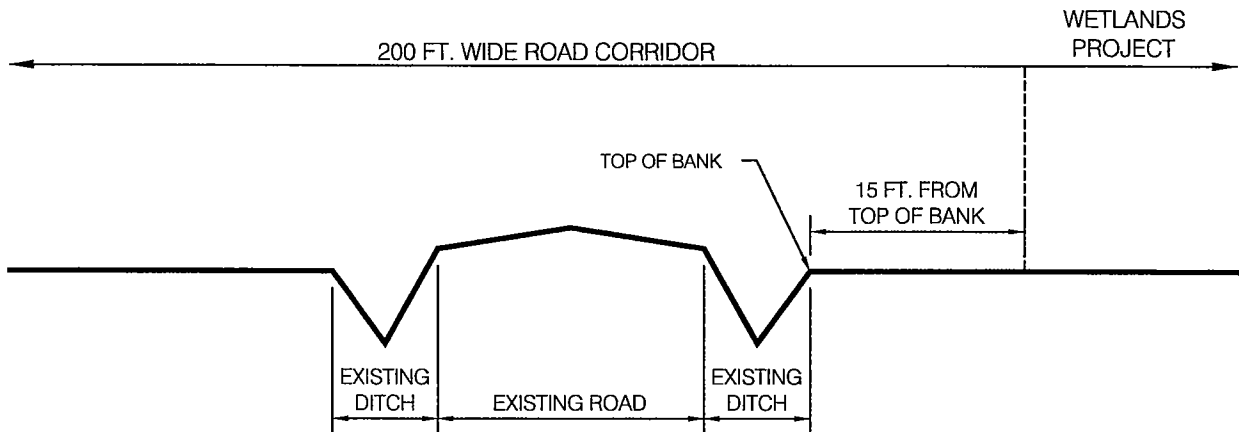




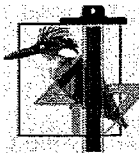
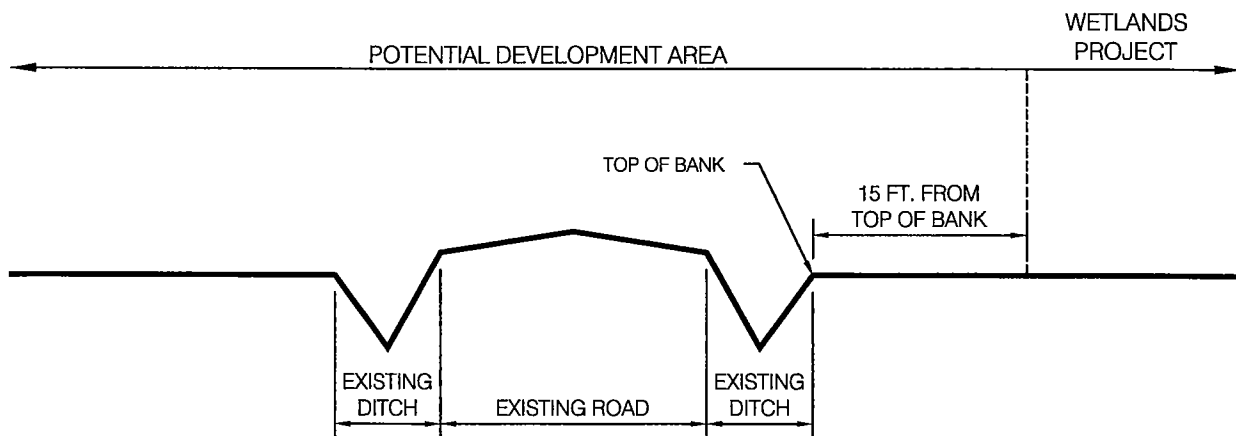
## TYPICAL PLACEMENT OF BOUNDARIES

CONFIDENTIAL PRIVILEGED FOR SETTLEMENT PURPOSES ONLY. PROTECTED BY F.R.E. 408.

### ALONG ROAD CORRIDORS



### FOR ROAD CORRIDORS ADJOINING POTENTIAL DEVELOPMENT AREAS AND/OR PRIOR CONVERTED CROPLAND



**Kerr Environmental  
Services Corp.**

*Sustainable Ecological Restoration  
and Environmental Consulting*

1008 Old Virginia Beach Rd, Suite 200 Ph: 757 963 2008  
Virginia Beach, VA 23451 Fax: 757 963 8322

**BOSHER SITE**  
CHESAPEAKE, VIRGINIA

NOT TO SCALE

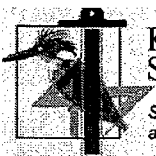
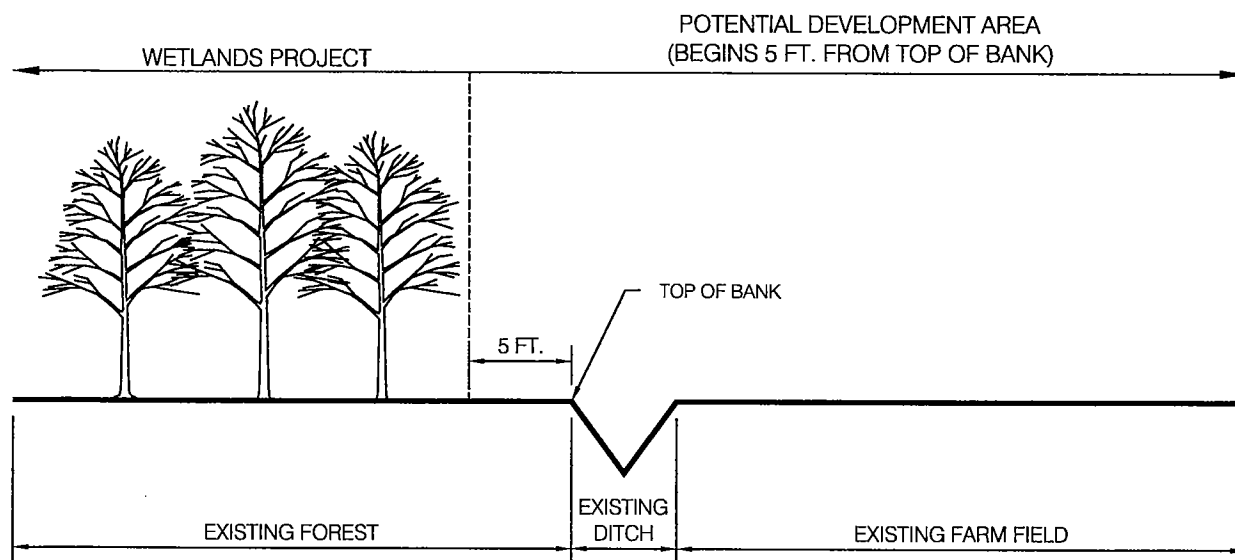
FIGURE 2

SEPTEMBER 27, 2007

## TYPICAL PLACEMENT OF BOUNDARIES

CONFIDENTIAL PRIVILEGED FOR SETTLEMENT PURPOSES ONLY. PROTECTED BY F.R.E. 408.

### ALONG PRIOR CONVERTED CROPLAND AND/OR POTENTIAL DEVELOPMENT AREA



**Kerr Environmental  
Services Corp.**

*Sustainable Ecological Restoration  
and Environmental Consulting*

1008 Old Virginia Beach Rd, Suite 200 Ph: 757 963 2008  
Virginia Beach, VA 23451 Fax: 757 963 8322

**BOSHER SITE**  
CHESAPEAKE, VIRGINIA

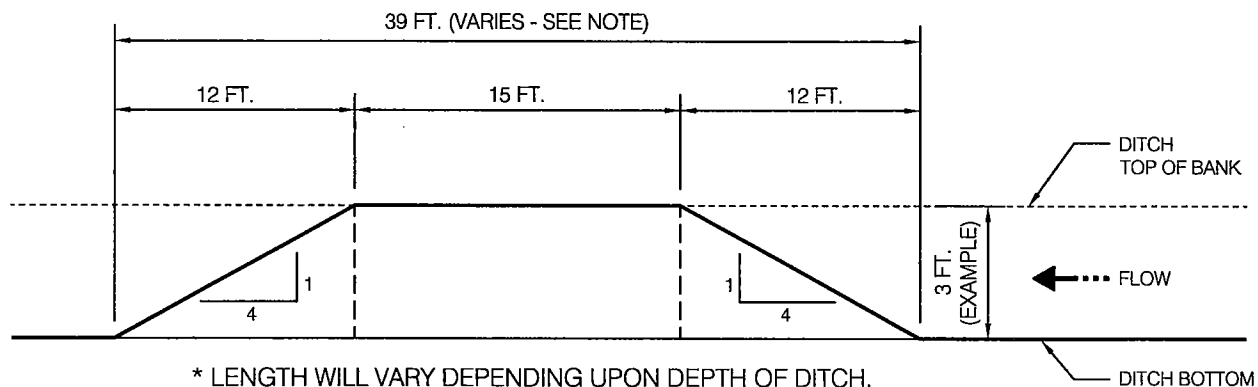
NOT TO SCALE

FIGURE 3

SEPTEMBER 27, 2007

## TYPICAL DITCH PLUG\*

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- SCARIFY SIDES OF EXISTING DITCH BEFORE ADDING NEW FILL.
- ALL SOILS TO BE CLAY LOAM OR LESS PERMEABLE.
- ALL DITCH PLUGS TO BE COMPACTED BY HEAVY EQUIPMENT.
- ALL EXPOSED SOILS TO BE SEEDED WITH A WETLAND SEED MIX.



**Kerr Environmental  
Services Corp.**

*Sustainable Ecological Restoration  
and Environmental Consulting*

1008 Old Virginia Beach Rd, Suite 200 Ph: 757 963 2008  
Virginia Beach, VA 23451 Fax: 757 963 8322

**BOSHER SITE**  
CHESAPEAKE, VIRGINIA

NOT TO SCALE

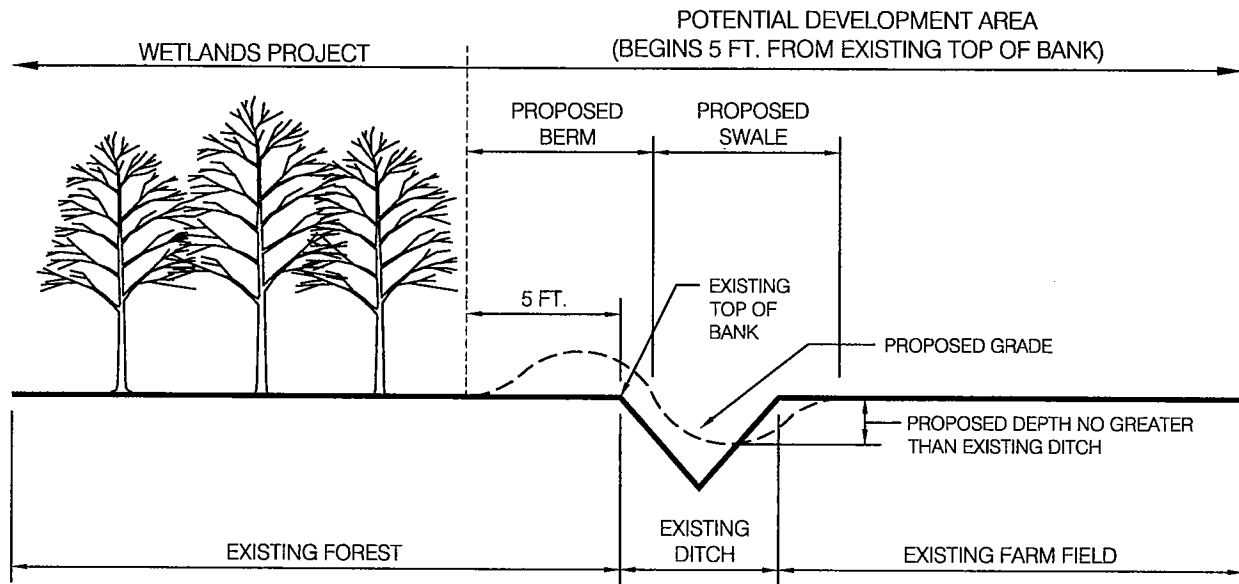
FIGURE 4

SEPTEMBER 27, 2007

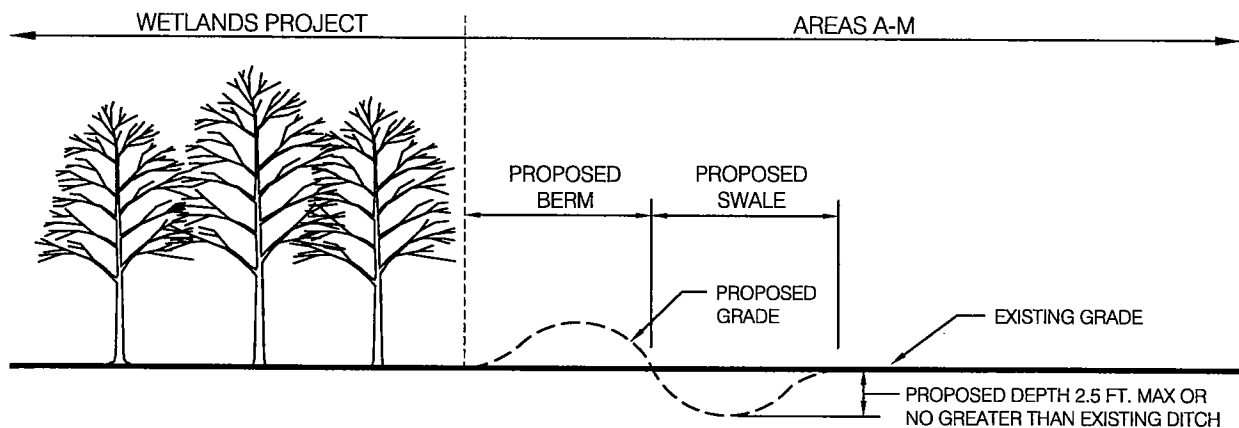
# TYPICAL PLACEMENT OF SWALES FOR STORMWATER RUNOFF WITHIN THE "POTENTIAL DEVELOPMENT AREA"

CONFIDENTIAL PRIVILEGED FOR SETTLEMENT PURPOSES ONLY. PROTECTED BY F.R.E. 408.

## ALONG PRIOR CONVERTED CROPLAND



## ALONG AREAS A-M



**Kerr Environmental  
Services Corp.**  
*Sustainable Ecological Restoration  
and Environmental Consulting*

1008 Old Virginia Beach Rd, Suite 200 Ph: 757 963 2008  
Virginia Beach, VA 23451 Fax: 757 963 8322

**BOSHER SITE**  
CHESAPEAKE, VIRGINIA

NOT TO SCALE

FIGURE 5

OCTOBER 11, 2007

Document prepared by  
and after recording return to:  
Hunton & Williams LLP  
951 East Byrd Street  
Richmond, VA 23219  
Attn: Karma Brown

[GPIN/Tax Parcel Number]: [INSERT TAX PARCEL ID]

## CONSERVATION EASEMENT

**THIS DEED OF CONSERVATION EASEMENT** (“Conservation Easement”), exempt from all recordation taxes pursuant to Virginia Code §§ 58.1-811(D) and (F), is made on this \_\_\_\_ day of \_\_\_\_\_, 200\_, by GREEN SEA FARMS, LLC, a Virginia limited liability company and BEECHTREE PARK, INC., a Virginia corporation (collectively, the “Grantor”), with an address of [address], and [name of grantee], a non-profit corporation organized and existing under the laws of [state], with a local address of [address] (“Grantee”).

### RECITALS:

A. The Grantor is the sole owner in fee simple of the property located west of Johnstown Road, east of Shillelagh Road, and south of the Whispering Pines subdivision, in Chesapeake, Virginia, legally described in Exhibit A, attached hereto and incorporated by this reference, which consists of approximately +/- 1,560 acres located in the City of Chesapeake, Virginia, and is generally known as the “Sea Bay Site” (the “Property”).

B. The Property is subject to a judicial Consent Decree entered in the United States District Court for the Eastern District of Virginia, Norfolk District on \_\_\_\_\_, 200\_ (the “Consent Decree”) attached hereto as Exhibit B.

C. The Consent Decree divides the Property into two separate areas, the Potential Development Area (“PDA”) and the Remedy Area (“RA”), as specifically delineated in Figure 1 to Exhibit B, attached hereto and incorporated by this reference. This Conservation Easement applies to that portion of the Property identified as the RA on Figure 1.

D. The RA is a significant natural area that qualifies as a “relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,” as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder.

E. The Grantor and Grantee have the common purpose of conserving the above-described conservation values of the RA in perpetuity. The Commonwealth of Virginia has authorized the creation of Conservation Easements pursuant to the Virginia Conservation Easement Act, Virginia Code § 10.1-1009 *et seq.*, and Grantor and Grantee wish to avail themselves of the provisions of that law as well as the provisions of the United States Internal Revenue Service Code of 1986, as amended (“I.R.C.”), Section 170(h), to the extent applicable, concerning qualified conservation contributions and I.R.C. Code Section 2031(c) allowing an

election for special treatment of qualifying conservation easements for estate tax purposes.

**NOW, THEREFORE**, the Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein and as an absolute and unconditional gift, hereby gives, grants, and conveys unto the Grantee a Conservation Easement in perpetuity over the RA of the nature and character as follows:

1. **PURPOSE.** The purpose of this Conservation Easement is to ensure that the RA will be preserved in perpetuity in its natural condition; to protect native plants, animals, or plant communities on the RA, and to prevent any use of the RA that will impair or interfere with the conservation values of the RA as described above, while allowing for traditional uses of the RA that are expressly permitted in this Conservation Easement and defined herein.

Except as authorized in Section 3, Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the RA that is inconsistent with the purposes of this Conservation Easement. However, unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the RA after any act of God or other event over which Grantor had no control. Grantor understands that nothing in this Conservation Easement relieves it of any obligation or restriction on the use of the RA imposed by law.

2. **RA PROHIBITIONS.** Any activity on or use of the RA inconsistent with the terms and purposes of this Easement is prohibited. Subject to the retained rights of Grantor set forth in Section 3 below, and without limiting the generality of the foregoing, the following activities and uses are expressly prohibited (the "Restrictions").

2.1 Subdivision. The RA shall not be divided, subdivided or partitioned, nor conveyed or pledged for a debt except in its current configuration as an entity.

2.2 Development. Except as expressly provided in Section 3 hereof, there shall be no new development or construction of buildings, structures, fixtures, or improvements (temporary or otherwise) within the RA, including without limitation mobile homes, fences, airplane landing strip, utility lines, towers, conduits, radio transmission antennas, utility transmissions, cellular phone transmission antennas or other structures.

2.3 Commercial Development. Any commercial or industrial use of or activity on the RA is prohibited. No right of passage across or upon any portion of the RA shall be permitted if that right of passage is used in conjunction with a commercial, manufacturing or industrial development, activity or use.

2.4 Mineral Extraction. Mining and hydrocarbon extraction are prohibited within the RA.

2.5 Agricultural Use. Farming and other agricultural uses and activities are

prohibited within the RA.

2.6 Timber Harvest. Except as authorized by paragraph 3.2, or as necessary for the restoration activities required by the Consent Decree and the right to maintain adequate drainage and flow expressly permitted under the Consent Decree and by this Conservation Easement (as described in paragraph 3.4 hereof), timber harvesting is prohibited within the RA, except to prevent an imminent hazard to human health or safety, or to remove invasive species.

2.7 Livestock. Grantor shall not graze, pasture or water domestic animals within the RA for any purpose.

2.8 Hydrologic Systems. Except as necessary for the restoration activities required by the Consent Decree, the right to maintain adequate drainage and flow expressly permitted under the Consent Decree and by this Conservation Easement (as described in paragraph 3.4 hereof), and as may be reasonably necessary for creation and maintenance of trails as permitted in paragraph 3.2, there shall be no alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies on or in the RA.

2.9 Excavation. Except as necessary for the restoration activities required by the Consent Decree, the right to maintain adequate drainage and flow expressly permitted under the Consent Decree and by this Conservation Easement (as described in paragraph 3.4 hereof), and as may be reasonably necessary for creation and maintenance of trails as permitted in paragraph 3.2, there shall be no ditching, draining, grading, diking, filling, excavating, dredging, removal of topsoil, sand, gravel, rock, minerals or other materials in the RA, drilling, building of new roads, or change in the topography of the RA in any manner.

2.10 No Dumping. There shall be no storage or dumping of trash, garbage, yard debris, harvest waste, or other unsightly or offensive material, hazardous substance, or toxic waste on the RA. There shall be no placement of underground storage tanks in, on, or under the RA. Except as expressly permitted in paragraphs 2.9, 3.2, 3.3, and 3.4 hereof or as required by the Consent Decree, there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted that could cause erosion or siltation on the RA.

2.11 No Pollution. There shall be no pollution of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies in the RA, nor shall activities be conducted on the RA that would be detrimental to water quality or purity or that could alter the natural water level or flow in or over the RA, except as authorized by the Consent Decree or paragraphs 3.2, 3.3, and 3.4 hereof.

2.12 Destruction of Plants, Disturbance of Natural Habitat. Except as expressly permitted in paragraphs 2.9, 3.2, 3.3, and 3.4 hereof or as required by the Consent Decree, there shall be no removal, harvesting, destruction or cutting of native trees, shrubs or plants in the RA. There shall be no planting of non-native trees, shrubs or plants on the RA. There shall be no use of



fertilizers, plowing, introduction of non-native animals, or disturbance or change in the natural habitat in any manner.

2.13 No Biocides. There shall be no use of pesticides or biocides including, but not limited to, insecticides, fungicides, rodenticides, and herbicides, except as approved by Grantee to control invasive species detrimental to the conservation values of the RA.

2.14 Signage. No signs or billboards or other advertising displays are allowed on the RA, except to advertise the Property for sale, or to prohibit unauthorized entry or use.

2.15 Motorized Vehicles. Motorized vehicles shall not be permitted on the RA except as necessary for emergency situations, to complete the restoration activities required by the Consent Decree, and the right to maintain adequate drainage and flow expressly permitted under the Consent Decree and by this Conservation Easement (as described in paragraph 3.4 hereof). With prior notice to the Grantee, motor vehicles may be used on the RA for construction and maintenance of foot trails as provided in paragraph 3.2 hereof.

### 3. **RIGHTS RETAINED BY GRANTOR.** Grantor retains the following rights:

3.1 Existing Uses. The right to undertake or continue any activity or use of the RA not prohibited by this Conservation Easement. Prior to making any change in use of the RA, Grantor shall notify Grantee in writing to allow Grantee a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

3.2 Recreational Uses. The right to engage in and permit others to engage in recreational uses of the RA, including, without limitation, camping, hunting, fishing, and hiking. The right, but not the obligation, to create and maintain foot trails with surfaces unimproved or improved only with organic materials, such as natural mulch, pine, or bark, provided that such trails shall not exceed four feet in width, and native vegetation will be disturbed only to the extent necessary to construct such trails. The trails shall be suitable for foot travel only. Consistent with the provisions of paragraphs 2.8 and 2.9 herein, such trails shall be constructed and maintained so as to minimize impacts on the hydrology or topography of the RA.

3.3 Restoration Activities. The right to perform the restoration activities required by the Consent Decree and to monitor and maintain the restoration activities as prescribed therein.

3.4 Maintenance of Adequate Drainage. To the extent provided by paragraph 19(b)(i) of the Consent Decree, in order to prevent flooding of existing or future agricultural activities and development within the PDA and, at the same time, protect the RA, the Grantor, its successors or assigns, retains the right of entry and of access to the RA for the purpose of removing obstructions and maintaining adequate drainage and flow through (i) the central collector ditch from Area J to the western property line of Area M, (ii) the ditch connecting Field 3 to the central collector ditch, and (iii) the two ditches outside the southwest corner of Field 3,

which together drain to Area F, each as identified in Figure 1 attached to the Consent Decree. As provided in the Consent Decree, future discharges of dredged and fill material are authorized as necessary for such maintenance work and for access to perform that work, if EPA has approved the plan for maintenance and access submitted to it by the Grantor, or does not respond within forty-five (45) days of the Grantor's submittal to EPA. Notwithstanding the above, the Grantor may proceed to the extent that the maintenance work and access to perform that work are authorized or exempt under the CWA.

3.5 Grant of Utility Easement. To the extent provided by paragraph 19(b)(ii) of the Consent Decree, Grantor retains the right to install (and/or grant easements to applicable utility providers to install) utility lines to provide utility service to any future improvements located in the PDA, provided, however, that the utility lines may not be located within the RA unless the Grantor or its successors or assigns establish to EPA that, for technical and engineering reasons, utility lines must be located within the RA and that without such utilities in such location the design of the development of the PDA would not be possible. Cost shall not be a factor in consideration of the preceding sentence.

3.6 Transfer. The right to sell, give, mortgage, lease, or otherwise convey the RA subject to the terms of this Conservation Easement.

4. **GRANTEE'S RIGHTS.** To accomplish the purpose of this Conservation Easement, the following rights are granted to Grantee by this Conservation Easement:

4.1 Right to Enforce. Except as permitted by Section 3, the right to preserve and protect the conservation values of the RA and enforce the Restrictions.

4.2 Right of Entry. The right of Grantee's staff, contractors and associated natural resource management professionals to enter the RA at reasonable times during normal business hours after prior written notice to Grantor, for the purposes of: (a) inspecting the RA to determine if Grantor is complying with the Restrictions; (b) enforcing the Restrictions; and (c) taking any and all actions with respect to the RA as may be necessary or appropriate, with or without an order of court, to remedy or abate violations hereof. Prior written notice is not required if Grantee is entering upon the RA because of an imminent and substantial violation that could, in the discretion of Grantee, substantially and permanently diminish or impair the conservation values of the RA. Such right of entry shall include the permanent right to cross the PDA, only as needed, for access to the RA. Grantee shall repair any damage done to the PDA resulting from crossing such lands to access the RA.

4.3 Monitoring and Research. The right, but not the obligation, to monitor the plant and wildlife populations, plant communities and natural habitats on the RA and to actively protect and manage them, if necessary, to ensure their continued presence and viability on the RA. Grantor may, but is under no obligation to, cooperate with Grantee in establishing, at no expense to Grantor, a written Monitoring and Research Plan to direct the monitoring of and research on plant and wildlife populations, plant communities and natural habitats on the

## Remedy Area.

4.4 Management of Exotic and Invasive Species. The right, but not the obligation, to control, manage or destroy exotic non-native species or invasive species of plants and animals that threaten the conservation values of the RA. Grantee will consult with Grantor prior to implementing management activities.

4.5 Discretionary Consent. The Grantee's consent for activities otherwise prohibited or requiring Grantee's consent under Section 2 above, may be given under the following conditions and circumstances: If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in Section 2 are deemed desirable by both the Grantor and Grantee, the Grantee may give permission for such activities, subject to the limitations of this paragraph. Such requests for permission, and requests for permission for activities requiring the Grantee's consent, shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Easement. The Grantee may give its permission only if it determines, in its discretion, that such activities (1) do not violate the purposes of this Conservation Easement AND (2) either enhance or do not impair any significant conservation interests associated with the RA. Grantee shall consult with EPA prior to giving its permission. If EPA does not respond within 45 days of consultation from the Grantee, Grantee may give its permission. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement under state or federal law or to agree to any activities inconsistent with the terms of the Consent Decree. Nothing in this paragraph shall require Grantee to consent to any activity otherwise restricted in this Conservation Easement.

5. **RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantor, or in any way to affect any existing obligation of the Grantor as owners of the RA.

6. **ACCESS.** No right of access by the general public to any portion of the RA is conveyed by this Conservation Easement. However, the public has the right to view the RA from adjacent publicly accessible areas such as public roads and waterways.

7. **ENFORCEMENT.** The Grantee shall have the right to prevent and correct violations of the Restrictions; to request, by written notice, corrective action sufficient to abate any violations; and to restore the RA to its condition immediately prior to the violation. For acts caused by Grantor, failure by the Grantor to abate the violation and take such other corrective action as may be requested by the Grantee within sixty (60) days after receipt of such written notice (the "cure period") shall entitle the Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the Restrictions; to require the restoration of the RA to its previous condition immediately prior to the violation; to enjoin the non-compliance by *ex parte* temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any

damages arising from the noncompliance. Such damages, when recovered, shall be applied by the Grantee to corrective action on the RA. Grantor has no liability or responsibility for violations caused by a third party.

7.1 Emergency Enforcement. If the Grantee, in its reasonable discretion, determines that circumstances require immediate action to prevent imminent and substantial damage to the conservation values of the RA due to a violation of the Restrictions by the Grantor, the Grantee may pursue its remedies under this Section without prior notice to the Grantor or without waiting for the cure period to expire.

7.2 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act, and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act or delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement.

7.3 Violations Due to Causes Beyond Grantor's Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the RA due to causes beyond the Grantor's control, such as changes caused by drought, fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of the Restrictions caused by the unauthorized wrongful acts of third persons, the Grantor may, upon request by the Grantee, assign its right of action to the Grantee, join in any suit, or appoint the Grantee as its attorney-in-fact for the purposes of pursuing enforcement action, all at the election of the Grantee.

7.4 Standing. By virtue of Grantee's acquisition of rights under this Conservation Easement, it shall be entitled, at its option, to standing before appropriate courts of law to pursue remedies or other matters which are necessary or incidental to the protection of the RA.

8. **TRANSFER OF RA.** Any time the RA, or any interest therein, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing within thirty (30) days prior to the transfer of the RA, and the document of conveyance shall expressly refer to this Conservation Easement. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Conservation Easement or of the transfer or limit their enforceability in any way.

9. **AMENDMENT OF EASEMENT.** This Conservation Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with I.R.C. Sec. 170(h), or any regulations promulgated in accordance with that Section and the Virginia Conservation Easement Act, as amended, or any regulations promulgated pursuant to that law. The Grantor and Grantee have no right or power to agree to any amendment that would affect the enforceability of this Conservation Easement.

10. **TERMINATION OF EASEMENT.** The Grantor hereby agrees that at the time of the execution of this Conservation Easement, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee, with a fair market value of the Conservation Easement as of the date of the conveyance that is at least equal to the proportionate value that this Conservation Easement at the time of the conveyance bears to the fair market value of the RA as a whole at that time. That proportionate value of the Grantee's property rights shall remain constant.

11. **EMINENT DOMAIN.** Whenever all or part of the RA is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee may join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests, and Grantee's proceeds shall be used in a manner consistent with the purpose of this Conservation Easement. All expenses incurred by the Grantor and the Grantee in such action shall be paid out of the recovered proceeds.

12. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of the Commonwealth of Virginia, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to the purpose of this Conservation Easement.

13. **INDEMNIFICATION.** Each party agrees to hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of the activities of the other party on the RA that causes injury to a person(s) or damage to property.

14. **TITLE.** The Grantor covenants and represents that the Grantor is the sole owner and is seized of the RA in fee simple and has good right to grant and convey this Conservation Easement; that the RA is free and clear of any and all liens, mortgages, judgments or other monetary encumbrances (other than the lien for real estate taxes not yet due and payable), including but not limited to, any deeds of trust or mortgages not subordinated to this Conservation Easement, but except for and subject to all existing easements, agreements, conditions, and restrictions of record, that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

15. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail or by facsimile, to Grantor and Grantee, respectively, at the following addresses or fax numbers, unless a party has been notified by the other of a change of address.

To Grantor:

To Grantee:

To EPA:

Pamela Lazos, Mail Code 3RC20  
Senior Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Jeffrey Lapp, Mail Code 3EA30  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

April Bowie, Docket Clerk, Mail  
Code 3RC00  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

16. **ENVIRONMENTAL CONDITION.** The Grantor covenants and represents to Grantor's actual knowledge that no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the RA, and that there are not now any underground storage tanks located on the RA. If, at any time, there occurs, or has occurred, a release in, on, or about the RA of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment, for which Grantor is responsible, Grantor agrees to take all steps reasonably necessary to assure its containment and remediation, including any cleanup that may be required. If the release was caused by Grantee or a third party, Grantee shall be responsible. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability to Grantee to exercise physical or managerial control over the day-to-day operations of the RA, or any of Grantor's activities on the RA.

17. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

18. **PARTIES.** Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

19. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, the Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.

20. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the RA.

21. **SUBSEQUENT LIENS ON RA.** No provisions of this Conservation Easement shall be construed as impairing the ability of Grantor to use the RA as collateral for subsequent borrowing, provided that any deed of trust, mortgage or lien arising from such a borrowing would be subordinate to this Conservation Easement.

22. **ACCEPTANCE & EFFECTIVE DATE.** As attested by the signature of its authorized representative affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia.

**TO HAVE AND TO HOLD,** this Grant of Conservation Easement unto the Grantee, its successors and assigns, forever.

**IN WITNESS WHEREOF,** the Grantor and Grantee, intending to legally bind themselves, have set their hands and seals on the date first written above.

WITNESS the following signature the day and year first above written.

OWNER

GREEN SEA FARMS, LLC, a  
Virginia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH/STATE OF \_\_\_\_\_)  
\_\_\_\_\_)ss.  
CITY/COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of  
\_\_\_\_\_, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of Green Sea  
Farms, LLC, a Virginia limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[SEAL]

My Registration No.: \_\_\_\_\_



BEECHTREE PARK, INC., a  
Virginia corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH/STATE OF \_\_\_\_\_ )  
 )ss.  
CITY/COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of  
\_\_\_\_\_, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of Beechtree  
Park, Inc., a Virginia corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[SEAL]

My Registration No.: \_\_\_\_\_

GRANTEE:

By: \_\_\_\_\_

Name:

Title:

COMMONWEALTH OF VIRGINIA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2007, by \_\_\_\_\_.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2007, by \_\_\_\_\_.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2007, by \_\_\_\_\_, who is \_\_\_\_\_ of \_\_\_\_\_

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Document prepared by  
and after recording return to:  
Hunton & Williams LLP  
951 East Byrd Street  
Richmond, VA 23219  
Attn: Karma Brown

[GPIN/Tax Parcel Number]: [INSERT TAX PARCEL ID]

## **DECLARATION OF RESTRICTIONS**

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration"), is made this \_\_\_\_ day of \_\_\_\_\_, 200\_, by GREEN SEA FARMS, LLC, a Virginia limited liability company and BEECHTREE PARK, INC., a Virginia corporation (collectively, the "Owner" and grantor for indexing purposes), and recites and provides:

### **RECITALS:**

WHEREAS, Owner is the owner of certain real property located in the City of Chesapeake, Virginia (the "Property") as more particularly described in those certain deeds recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia (the "Land Records") in Deed Book \_\_\_\_, page \_\_\_\_, Deed Book \_\_\_\_, page \_\_\_\_, and Deed Book \_\_\_\_, page \_\_\_\_;

WHEREAS, the Property is subject to a judicial Consent Decree entered in the United States District Court for the Eastern District of Virginia, Norfolk Division on \_\_\_\_, 200\_ (the "Consent Decree") attached hereto as Exhibit A;

WHEREAS, the Consent Decree divides the Property into two separate areas, the Potential Development Area ("PDA") and the Remedy Area ("RA"), as specifically delineated on Figure 1 of Exhibit A;

WHEREAS, Owner desires to impose on the RA certain restrictive covenants expressing Owner's intent to preserve the RA, consisting of \_\_\_\_ acres of land as shown on the plat dated \_\_\_\_\_, 2007, entitled [INSERT PLAT INFORMATION] (the "Plat"), a copy of which is attached hereto as Exhibit B and incorporated into this Declaration by this reference, in perpetuity in its natural state as detailed below; and

WHEREAS, it is the purpose of this Declaration to ensure that the RA will be preserved in perpetuity in its natural condition; to protect native plants, animals, or plant communities on the RA, and to prevent any use of the RA that will impair or interfere with the conservation of the RA.

### **AGREEMENT:**

NOW, THEREFORE, THIS DECLARATION WITNESSETH: Owner does hereby declare, covenant and agree, for itself and its successors and assigns, that the RA shall be hereafter held, leased, transferred, and sold subject to the following conditions and restrictions (the "Restrictive Covenants") which shall run with title to the RA and be binding on all parties and persons claiming under them.

1. Restrictive Covenants. Any activity on or use of the RA inconsistent with the purpose of maintaining its natural state as set forth above is prohibited, except to the extent such rights are expressly reserved to the Owner, its successors or assigns, as set forth in paragraph 2 below. The following activities are expressly prohibited:

- a. no new construction of buildings, structures, fixtures, or improvements (temporary or otherwise);
- b. no excavation, filling, plowing, cultivation or other earth disturbing activity, including ditching, draining, dewatering, grading, diking, dredging, removal of topsoil, sand, gravel, rock, mineral or other materials, or any other activity that will change the topography or hydrology on the RA except as permitted in paragraph 2 or the Consent Decree;
- c. no motorized vehicles will be permitted in the RA for recreational purposes; and
- d. no removal of or interference with native vegetation, including no cutting, clearing, mowing, timbering, farming, cultivating, plowing, harvesting or other disturbance of the native vegetation, except as permitted in paragraph 2 or the Consent Decree.

2. Rights Reserved. The Restrictive Covenants will be subject and subordinate to the following rights hereby reserved and retained by the Owner, its successors or assigns:

- a. to the extent necessary to prevent flooding of existing or future agricultural activities and development within the PDA and, at the same time, protect the RA: (1) the right of entry and of access to the RA for the purpose of removing obstructions and maintaining adequate drainage and flow through (i) the central collector ditch from Area J to the western property line of Area M, (ii) the ditch connecting Field 3 to the central collector ditch, and (iii) the two ditches outside the southwest corner of Field 3, which together drain to Area F, each as identified in Figure 1 attached to the Consent Decree; and (2) the right to install (and/or grant easements to applicable utility providers to install) utility lines to provide utility service to any future improvements located in the PDA; provided, however, that the utility lines may not be located in the RA unless the Owner or its successors or assigns establish, to EPA as provided in the Consent Decree attached hereto as Exhibit A, that, for technical and engineering reasons, utility lines must be located within the RA and that without such utilities in such location the design of the development of the PDA would not be possible. Cost shall not be a factor in consideration of the preceding sentence;
- b. the right, but not the obligation, to control, manage or destroy exotic non-native species or invasive species of plants and animals that threaten the conservation values of the RA and for the non-commercial de minimis harvest of trees to prevent an imminent hazard to human health or safety;

c. the right to engage in and permit others to engage in recreational uses of the RA, consistent with the prohibitions in paragraph 1, including, without limitation, camping, hunting, fishing, and hiking; the right, but not the obligation, to create and maintain foot trails with surfaces unimproved or improved only with organic materials such as natural mulch, pine or bark, provided that such trails shall not exceed four feet in width and native vegetation will be disturbed only to the extent necessary to create such trails. The trails shall be suitable for foot travel only. Consistent with the provisions of paragraph 1 herein, such trails shall be constructed and maintained so as to minimize impacts on the hydrology or topography of the RA; and

d. the right to post signs, billboards, or other advertising displays for the purpose of advertising the Property for sale or to prohibit unauthorized entry or use.

3. Completeness; Modification. This Declaration constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior discussions, understandings or agreements between the parties. The Restrictive Covenants contained herein shall not hereafter be altered in any respect without the express written approval and consent of the Owner, or its successors or assigns, and the U.S. Environmental Protection Agency ("EPA") or the U.S. Department of Justice ("DOJ"). DOJ and EPA shall approve any amendment, modification or alteration to the Restrictive Covenants so long as such amendment, modification or alteration does not impair the conservation values of the RA, in EPA's or DOJ's sole discretion. The Owner, or its successors or assigns, may apply to the EPA or DOJ for vacation or modification of this Declaration; however, after recording, these Restrictive Covenants may only be amended or vacated by a document signed by the EPA or DOJ, and the Owner, or its successors or assigns, and recorded among the Land Records.

4. Compliance, Inspections and Enforcement. The United States and its respective authorized agents shall, upon advance notice to the Owner, have the right to enter and go upon the RA to inspect the RA, and take such actions as may be necessary to verify compliance with these Restrictive Covenants. The Restrictive Covenants shall be enforceable by any proceeding at law or in equity or administrative proceeding by the EPA and their respective authorized agents. Failure by any agency (or owner) to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

5. Severability Provision. The provisions hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision thereof.

6. Governing Law. This Declaration shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Virginia, without regard to conflicts of laws principles.

7. Successors and Assigns. This Declaration shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns..

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]  
[SIGNATURES APPEAR ON FOLLOWING PAGES.]

WITNESS the following signature the day and year first above written.

OWNER

GREEN SEA FARMS, LLC, a  
Virginia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH/STATE OF \_\_\_\_\_ )  
 )ss.  
CITY/COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of Green Sea Farms, LLC, a Virginia limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[SEAL]

My Registration No.: \_\_\_\_\_



BEECHTREE PARK, INC., a  
Virginia corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH/STATE OF \_\_\_\_\_ )  
\_\_\_\_\_)ss.  
CITY/COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of  
\_\_\_\_\_, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of  
Beechtree Park, Inc., a Virginia corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[SEAL]

My Registration No.: \_\_\_\_\_